



## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### **60-Day Report to Congress on Domestic Content Procurement Preferences Applicable to Federal Financial Assistance**

**AGENCY:** Assistant Secretary for Financial Resources (ASFR), Health and Human Services (HHS or the Department).

**ACTION:** Notice.

**SUMMARY:** The Infrastructure Investment and Jobs Act (IIJA) requires Federal awarding agencies to identify and report to Congress each Federal financial assistance program for infrastructure administered by the Federal awarding agency.

**FOR FURTHER INFORMATION CONTACT:** Johanna Nestor at [Johanna.Nestor@hhs.gov](mailto:Johanna.Nestor@hhs.gov) or (202) 631-0420.

**SUPPLEMENTARY INFORMATION:** Section 70913(b) of the IIJA requires that the report:

- Identify all domestic content procurement preferences applicable to the Federal financial assistance;
- Assess the applicability of the domestic content procurement preference requirements, including — (A) section 313 of title 23, United States Code; (B) section 5323(j) of title 49, United States Code; (C) section 22905(a) of title 49, United States Code; (D) section 50101 of title 49, United States Code; (E) section 603 of the Federal Water Pollution Control Act (33 U.S.C. 1388); (F) section 1452(a)(4) of the Safe Drinking Water Act (42 U.S.C. 300j–12(a)(4)); (G) section 5035 of the Water Infrastructure Finance and Innovation Act of 2014 (33 U.S.C. 3914); (H) any domestic content procurement

preference included in an appropriations Act; and (I) any other domestic content procurement preference in Federal law (including regulations);

- Provide details on any applicable domestic content procurement preference requirement, including the purpose, scope, applicability, and any exceptions and waivers issued under the requirement; and,
- Include a description of the type of infrastructure projects that receive funding under the program, including information relating to —
  - the number of entities that are participating in the program;
  - the amount of Federal funds that are made available for the program for each fiscal year; and,
  - any other information the head of the Federal agency determines to be relevant.

In accordance with the Office of Management and Budget (OMB) Memorandum M-22-08 – “Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act,” Federal awarding agencies must also include a separate notice to each appropriate congressional committee, including the Committee on Homeland Security and Governmental Affairs, the Committee on Commerce, Science, and Transportation, the Committee on Environment and Public Works, the Committee on Banking, Housing, and Urban Affairs, and the Committee on Armed Services of the Senate; and the Committee on Oversight and Reform, the Committee on Armed Services, and the Committee on Transportation and Infrastructure of the House of Representatives.

The following report provides the Department of Health and Human Services (HHS) initial analysis of its programs and the Build America, Buy America requirements.

**Background:** Title IX of the IIJA, entitled “Build America, Buy America” (BABA), requires that no later than May 14, 2022, each Federal awarding agency must ensure that none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project, unless all of the iron, steel, manufactured products, and construction materials used in the project, are produced in the United States (absent a waiver authorized by statute). Section 70912(5) of the IIJA, defines “infrastructure” to include at a minimum, the structures, facilities, and equipment for, in the United States—roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and waste-water systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property.

**Analysis:** The financial assistance programs funded by HHS focus on medical research, health services, and essential human services. As part of this focus, HHS occasionally provides construction support for health centers, medical centers, and research facilities. The IIJA, through the BABA imposes requirements on Federal financial assistance for infrastructure projects, and focuses on sectors of domestic infrastructure beyond the scope of HHS’s programs. HHS has determined that such construction support is not subject to BABA requirements. If it is determined on a case-by-case basis that the BABA requirements apply to any particular Federal financial assistance provided by HHS, HHS will evaluate whether pursuing a waiver authorized by statute is appropriate.

Historically, most recently in May 2019, OMB has concurred with HHS’s characterization of HHS financial assistance programs. On December 20, 2021, OMB issued to Federal awarding agencies, Memorandum M-22-08 – “Identification of Federal Financial Assistance Infrastructure Programs Subject to the Build America, Buy America Provisions of the Infrastructure Investment and Jobs Act.” The Memorandum provides additional implementation instructions, however, the Memorandum did not alter HHS’s current assessment. Should OMB issue

additional guidance, HHS will re-evaluate the applicability of the BABA requirements to our financial assistance programs.

**Alice Bettencourt,**

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